

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

FILED

FEB 25 1982

Stuart Cunningham, Clerk  
United States District Court

BALLY MANUFACTURING CORPORATION,

Plaintiff,

-VS-

D. GOTTLIEB & COMPANY, et al.,

Defendants.

No. 78 C 2246

DOCKETED

FEB 24 1982

DEPOSITION OF KEN THOMAS

Taken on

Wednesday, August 19, 1981

#7997

JMS

JOYCE MARIE SAWAYA  
CERTIFIED SHORTHAND REPORTER INC

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION  
3

4 BALLY MANUFACTURING CORPORATION, )  
5 )  
6 Plaintiff, )  
7 )  
8 -vs- )  
9 )  
10 D. GOTTLIEB & COMPANY, WILLIAMS )  
11 ELECTRONICS, INC., and ROCKWELL )  
12 INTERNATIONAL CORPORATION, )  
13 )  
14 Defendants. )

No. 78 C 2246

DOCKETED

FEB 24 1982

11 DEPOSITION OF KEN THOMAS, produced as a witness  
12 by and on behalf of the defendants, pursuant to Stipulation,  
13 taken on Wednesday, August 19, 1981, at the hour of 8:45 a.m.,  
14 at 5 Palo Alto Square, Palo Alto, California, before DEBBIE  
15 LANDI, CSR #2964, a Notary Public in and for the State of  
16 California.

17  
18 A P P E A R A N C E S:

19 For the Plaintiff: FITCH, EVEN, TABIN, FLANNERY  
20 & WELSH  
21 By A. SIDNEY KATZ, ESQ., and  
22 DONALD L. WELSH, ESQ.  
Suite 900-135 South LaSalle St.  
Chicago, Illinois 60603  
23 For the Defendant  
Williams Electronics: McDOUGALL, HERSH & SCOTT  
By MELVIN M. GOLDENBERG, P.C.  
24 135 S. LaSalle Street  
Chicago, Illinois 60603  
25 For the Deponent: MYERS, HAWLEY, MORLEY & MOORE  
26 By SAM R. MORLEY, ESQ.  
166 Main Street  
27 Los Altos, California 94022  
28

INDEX OF EXAMINATION

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MR. GOLDENBERG

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MR. WELSH

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1 KEN THOMAS,

2 being first duly sworn by the Notary Public to tell the  
3 truth, the whole truth and nothing but the truth, testified  
4 as follows:

5 MR. GOLDENBERG: Mr. Thomas --

6 MR. MORLEY: Could I say something just for the  
7 record. Just for the record, I'm Sam Morley, and I'm  
8 representing the witness. I understand this deposition is  
9 being taken pursuant to a stipulation between all of the par-  
10 ties, which stipulation also facilitated making Mr. Thomas  
11 available at this time.

12 MR. GOLDENBERG: Except there was a subpoena.

13 MR. MORLEY: There was a subpoena.

14 MR. GOLDENBERG: So Mr. Thomas is not appearing  
15 voluntarily.

16 MR. MORLEY: That's correct, and we agreed the  
17 deposition would be taken at this time and pursuant to a  
18 stipulation that there would be all appropriate protective  
19 orders regarding public disclosure, both in the federal  
20 action and in the action before the patent office. Also,  
21 of course, subject to the possibility that the patent  
22 examiner may desire on his own motion to make this deposition  
23 or some part of it a part of his decision.

24 MR. GOLDENBERG: Well, I'm not quite sure what  
25 is meant by all appropriate protective orders. You under-  
26 stand, sir, that we are inquiring about matters -- propose  
27 to inquire about matters that occurred in the period 1973-74,  
28 which matters have been spread extensively on the public

1 record in the United States District Court in Chicago and  
2 in the patent office. I think I told you over the phone in  
3 the patent office that their position, as I understand it,  
4 is that if this material is submitted and is relied upon by  
5 the examiner for any action, that he takes it then as part  
6 of the public record, and I just want to be clear --

7 MR. MORLEY: We have no quarrel with that, counsel.

8 MR. GOLDENBERG: Is it your position that this  
9 entire deposition is subject to some kind of protective  
10 order subject to that qualification or some portions of it  
11 as we get into it?

12 MR. MORLEY: It was my understanding the entire  
13 deposition would be subject to those protective orders  
14 against public disclosure. The reason for it being, as I  
15 explained to you, the sensitive nature of Mr. Thomas' contact  
16 with Atari and the fact that he has an on-going business  
17 relationship with them, and I want to make sure for the  
18 record that it's understood that he is doing everything he  
19 can to keep from having the matter of this deposition --  
20 matter of public record. In fact, I think there was even an  
21 indication by you or one of your associates that if we  
22 requested it, that you would contact either the attorneys or  
23 other people with Atari to indicate that it was your desire  
24 to take this deposition and to protect Mr. Thomas' relation-  
25 ship with Atari wherever possible.

26 MR. GOLDENBERG: We have discussed the matter with  
27 Atari's attorneys, and no indication has come from them of  
28 any objection to the taking of the testimony, and for myself

1 I am willing to say that we will take the deposition with  
2 the understanding that it would be submitted in camera to  
3 the District Court. I am thinking out loud, and I may want  
4 to change some of this. We cannot do that with respect to  
5 the patent office for the reasons I stated. The patent  
6 office won't receive it.

7 MR. KATZ: May I make a comment. Mr. Morley had  
8 asked whether it was okay with us, with the plaintiff, to  
9 take this deposition under the existing protective order in  
10 litigation, and we agreed that was okay with us, and I would  
11 suggest then that we follow the same procedure that we follow  
12 with other materials that are under the protective order that  
13 are submitted to the patent office, they're generally  
14 submitted under seal and it's up to the examiner to determine  
15 if it's material he wants to put into the record or not.

16 MR. GOLDENBERG: These affidavits weren't submitted  
17 into seal, and they go into Atari matters, and I really don't  
18 understand this. Mr. Thomas -- he didn't have to make  
19 these affidavits. He voluntarily did this. He opened up  
20 the door to this matter here. And I am really concerned  
21 about what I see are attempts to restrain our line of inquiry  
22 and this use of whatever we find out on these things if we  
23 find out anything.

24 MR. MORLEY: Counsel, we're not asking that your  
25 line of inquiry be restrained in any way. I am only  
26 following up on the telephone conversation that you and I --  
27 if I can finish --

28 MR. GOLDENBERG: Surely, sir.



1 MR. MORLEY: I'm only following up on the conversa-  
2 tion you and I had over the telephone or with one of your  
3 associates that it -- there would be appropriate protective  
4 orders in this case and that they would be in both of the  
5 actions. I did that in order to make Mr. Thomas available  
6 at this more convenient time to all people concerned.

7 MR. GOLDENBERG: Let me say -- if the plaintiffs  
8 have agreed that the protective order entered in this  
9 case in the present form shall apply to bring this to a  
10 close, I'll agree. Now, the thing I can't do, Mr. Morley,  
11 is for the other defendants in the case. I can only say  
12 with respect to them that I will use my good offices to  
13 persuade them to have that agreement.

14 MR. MORLEY: I would think they would have to be  
15 bound by something here. They have notice of this deposition.

16 MR. KATZ: They noticed it.

17 MR. MORLEY: In any event, I think that's suffi-  
18 cient for Mr. Thomas' purposes. I have no intent to go into  
19 it any farther at this stage.

20 I would also say to you just for the record and  
21 again for purposes of time, there was some indication that  
22 ever hopefully this deposition would not take longer than  
23 the morning, hopefully not longer than a day. I'll indicate  
24 for the record that I do have a matter that is being possibly  
25 continued. It may require the termination of this deposition  
26 as early as 1:30 or 2:00.

27 MR. GOLDENBERG: Can we resume tomorrow if we're  
28 not done, sir?

1 MR. MORLEY: I would hope so.

2 MR. GOLDENBERG: I'll make every effort to be done,  
3 I assure you.

4  
5 EXAMINATION BY MR. GOLDENBERG:

6 Q Well, Mr. Thomas, would you state your name as you  
7 ordinarily use it in business and give your residence  
8 address.

9 A Ken Thomas, 320 Riverside Avenue, Ben Lomond, California.

10 Q Mr. Thomas, have you ever given a deposition before,  
11 sir?

12 A No, I haven't.

13 Q My name is Goldenberg. I am an attorney for Williams  
14 Electronics, the defendant in this lawsuit brought by -- a  
15 defendant in this lawsuit brought by Bally. I shall be ask-  
16 ing you questions, sir, and if you don't understand my ques-  
17 tion, please let me know, and I would attempt to rephrase  
18 it and put it in an understandable form. I can simply ask,  
19 answer the questions to the best of your knowledge and  
20 recollection. That's all you're required to do.

21 Are you the Kenneth Thomas who executed an affidavit  
22 -- I show you a copy of that, sir--in connection with a  
23 controversy between Bally Manufacturing and my client Williams  
24 Electronics?

25 A Yes, I am.

26 Q Are you the Kenneth Thomas who executed a declaration  
27 in that same controversy, sir?

28 A Yes, I am.



1 Q I show you first the affidavit --

2 MR. WELSH: The record ought to show the witness  
3 was shown a copy of a document and looked at that.

4 MR. GOLDENBERG: I want to identify what I did  
5 show him.

6 Q BY MR. GOLDENBERG: I show you the affidavit which was  
7 identified in certain proceedings in the patent office as  
8 Exhibit CF, and I ask you if that's the affidavit you have  
9 just looked at, sir, and indicated it was an affidavit you  
10 executed, and here's the CF designation for the exhibit.

11 A Yes.

12 Q I show you a declaration which has been identified in  
13 the patent office proceedings as Exhibit CL, and I ask you  
14 if that's the declaration you looked at a moment ago and  
15 identified it as one you made, sir?

16 A Yes, it is.

17 Q Mr. Thomas, would you tell me your education after  
18 high school, sir?

19 A I have an aeronautics degree from San Jose State.

20 Q When did you receive that degree?

21 A 1970.

22 Q Would you give me your employment experience starting  
23 with your graduation from San Jose State in chronological  
24 fashion identifying the companies for whom you worked, what  
25 your duties were and what generally the business of those  
26 companies was -- were, as you understand them.

27 A The first three months after -- three to four months  
28 after graduation, I worked for a home developer in Saratoga

1 called Saratoga Foothills Development, and I was in sales  
2 and design. And after that, I worked for a year and a half  
3 for Al Bosworth Masonry, and then joined Cramer Electronics.

4 Q What did you do for Al Bosworth Masonry?

5 A I was a hodcarrier.

6 Q What kind of sales were you in when you were with the  
7 home development company, selling homes?

8 A Home sales, custom home sales.

9 Q When did you join Cramer?

10 A That would have been April of '72.

11 Q Are you sure about that, sir?

12 A No.

13 Q I note in your affidavit that you say in 1971 you were  
14 employed by Cramer. What is your recollection?

15 A Well, that probably is a mistake.

16 Q Perhaps we can do the arithmetic. You got your degree  
17 in 1970? A Yes.

18 Q That was a Bachelor's Degree?

19 A Yes.

20 Q Three to four months in homes sales and a year and a  
21 half in -- as a hodcarrier for Al Bosworth Masonry. Was that  
22 degree in June of 1970?

23 A Yes.

24 Q That would take us -- if my arithmetic is correct, you  
25 went to work for -- Saratoga Development --

26 A Yes.

27 Q Did you go to work for them in '70 or '71?

28 A '70.

1 Q And did you go to work for Al Bosworth in '71 or '72?  
2 What time of the year was it?

3 A I think it was in '70.

4 Q So you joined -- that would be toward the end of 1970.

5 A Yes.

6 Q So you were with Al Bosworth all during 1971.

7 A Yes.

8 Q And you didn't join Cramer until '72.

9 A That's probably correct.

10 Q So the affidavit, this Exhibit CF, that's an error to  
11 that extent, where it says that you were with Cramer 1971  
12 through '75. A Yes.

13 Q When you joined Cramer Electronics, what position did  
14 you hold?

15 A Inside sales.

16 Q What is inside sales?

17 A It's inside phone sales. A customer calls in, and you  
18 take his order.

19 Q How long did you hold that position, sir?

20 A I was inside sales for approximately six months.

21 Q And then what position did you have?

22 A I was a field salesman.

23 Q What were your duties as a field salesman?

24 A To call on a set of accounts and territory, stimulate  
25 sales.

26 Q Did you actually take orders?

27 A Yes, I did.

28 Q Did you work under the supervision of anybody in Cramer?

1 Let's take first your period as inside sales, for whom were  
2 you reporting?

3 A I was reporting to at that time Pete Nustater.

4 Q Is Mr. Nustater still with the company?

5 A No, he's not. He's working with Kierluff Electronics  
6 today.

7 Q When you began your duties as field salesman, to whom  
8 did you report?

9 A Joe Meringo.

10 Q How do you spell that?

11 A M-e-r-i-n-g-o.

12 Q Is Mr. Meringo still with the company, sir?

13 A No.

14 Q Do you know where he's located?

15 A Yes.

16 Q Where?

17 A Vassar Travel.

18 Q Where is that?

19 A It's in Santa Clara.

20 Q Do you know what he does there?

21 A He owns Ambassador Travel.

22 Q When you called on accounts, did Mr. Meringo accompany  
23 you?

24 A At certain times.

25 Q When you called on accounts, were you ever accompanied  
26 by anyone other than Mr. Meringo?

27 A Yes.

28 Q Who?

- 1 A Doug Dexter.
- 2 Q How do you spell his name?
- 3 A D-e-x-t-e-r.
- 4 Q What was his position with the company?
- 5 A Division manager.
- 6 Q Was he Mr. Meringo's superior?
- 7 A Yes.
- 8 Q Is he still with Cramer Electronics?
- 9 A Cramer Electronics no longer exists.
- 10 Q When did it go out of business, sir, to your knowledge?
- 11 A Cramer went out of business a year and a half ago. I
- 12 don't have the exact dates.
- 13 Q Your best recollection?
- 14 A Yes, sir.
- 15 Q How long were you employed by Cramer Electronics?
- 16 A Approximately three and a half years.
- 17 Q After you assumed the position of field salesman, did
- 18 you have any other job?
- 19 A No.
- 20 Q Did you have a territory that you covered?
- 21 A Yes, I did.
- 22 Q What was that territory?
- 23 A The territory varied as time with the company.
- 24 Q Initially what territory did you cover?
- 25 A I think it was more accounts. It wasn't really a
- 26 general territory.
- 27 Q Did you ever have a geographical territory as such?
- 28 A No.

1 Q Would it be possible that you would have a particular  
2 account on behalf of Cramer and some other salesman would  
3 have an account -- different account a half mile away?

4 A True.

5 Q When you called on prospective customers, were you more  
6 often alone, or were you more often accompanied?

7 A More often alone.

8 Q When did you leave Cramer?

9 A I can't give you the real date. I have not looked at  
10 any of -- I don't have any records of when I left. I'd have  
11 to look at W-2 forms to tell you exact dates.

12 Q Well, you joined it in April of '72, there three and  
13 a half years. '76.

14 Q That's probably about right.

15 Q I want your best recollection. Your affidavit says '75.

16 A When I gave that affidavit, it was from complete memory.  
17 It was not referring to any paperwork or any real hard  
18 facts as far as dates were concerned.

19 Q Have you referred to any paperwork --

20 A No, I haven't.

21 Q -- since you gave the affidavit?

22 A No, I haven't.

23 Q Now, your recollection is something different than what  
24 it was when you made the affidavit?

25 A True.

26 Q So it might have been '75 or '76?

27 A That time frame.

28 Q What job did you take after you left Cramer?



- 1 A I started my own representative company.
- 2 Q What was the name of that company?
- 3 A Thomas Associates.
- 4 Q What was the business of Thomas Associates?
- 5 A Sales of electronic components.
- 6 Q What kinds of electronic components?
- 7 A Printed circuit boards, IC testing, and sockets and  
8 hardware.
- 9 Q Where was that business located, sir?
- 10 A Sunnyvale.
- 11 Q Did it have an office?
- 12 A Yes. I can't even remember the name of the office.
- 13 Q Did it have any employees besides yourself?
- 14 A No.
- 15 Q How long did you continue to do business as Thomas  
16 Associates?
- 17 A Approximately six months.
- 18 Q What did you do, sir, then?
- 19 A Went to work for Gardmore Circuits.
- 20 Q G-a-r-d --
- 21 A True, m-o-r-e.
- 22 Q What was the business of Gardmore Circuits?
- 23 A Printed circuit boards.
- 24 Q What position did you hold there?
- 25 A National sales manager.
- 26 Q What were your duties as national sales manager?
- 27 A To manage the representatives that we had throughout  
28 the country and to call on certain accounts directly for the

1 company.

2 Q Did you have people reporting to you?

3 A I had representatives reporting to me. I did not have  
4 any salesman directly under me. We had no direct sales. It  
5 was all through representatives.

6 Q How long were you with Gardmore Circuits?

7 A Approximately a year and a half.

8 Q What year did you leave them? My rough calculations are  
9 giving that around '78.

10 A '78, approximately.

11 Q After you left Gardmore Circuits, what position did  
12 you have?

13 A I joined Thresum Associates, T-h-r-e-s-u-m.

14 Q What is the business of Thresum Associates?

15 A Manufacturer's representative.

16 Q What kinds of products?

17 A Integrated circuits, components like capacitors.

18 Q What companies does Thresum represent?

19 A Today?

20 Q Yes.

21 A Today we represent Monolithic Memories, Siemens  
22 Corporation, Zymos, Pacific Reliability, IDT.

23 Q I'm trying to get an idea of what kind of products they  
24 sell, and by identifying the companies.

25 A Basically high technology components.

26 Q Does that include anybody's microprocessors or micro-  
27 processor kinds of devices?

28 A Yes.

1 Q Whose?

A Siemens'.

2 Q Is Atari a customer of Thresum Associates?

3 A Yes.

4 Q You understand, sir, I do not want you to tell me about  
5 the present business affairs between Atari and Thresum, and  
6 I will try to avoid that area altogether. My line of inquiry  
7 goes to the events which occurred in '73-'74. Does Thresum  
8 Associates have any business relationships with Bally Manu-  
9 facturing to your knowledge?

10 A We have had some with Bally in Reno, but I don't know  
11 how that's connected.

12 Q Midway Manufacturing?

13 A No.

14 Q How did you come to make the affidavit which has been  
15 identified as Exhibit CF in this patent office proceeding  
16 I've had reference to?

17 A I was contacted by Jerry Schnayar.

18 Q How were you contacted, sir?

19 A By telephone.

20 Q When was that, sir, first contact with Mr. Schnayar?

21 A I can't remember the exact date. It was a few months  
22 ago.

23 Q More than one month ago?

24 A Yes.

25 Q The date of the affidavit is February 27, 1981. I  
26 would take it this contact was before that date.

27 A The affidavit was taken days after the initial contact.

28 Q Within days after the initial contact?

1 A Yes.

2 Q So it would have been sometime in February of this year?

3 A Yes.

4 Q This was by telephone. Where were you called, sir,  
5 your home, your office?

6 A My office.

7 Q And what did Mr. Schnayar say to you?

8 A That he had some questions -- he had some questions to  
9 ask about my contacts with Steve Mayer, and he brought up a  
10 name Jesse Huffman, which is a name from the past, and I  
11 called Jesse to find out what was -- what the whole situa-  
12 tion was about, and he was just as confused as I was.

13 Q Did Mr. Schnayar ask you some questions over the tele-  
14 phone on this first occasion?

15 A Yes.

16 Q What questions did he ask you, sir?

17 A I can't really remember.

18 Q Not at all?

19 A No. It was just -- it was in reference to Steve Mayer.  
20 He brought up Mr. Huffman's name.

21 Q How did he bring Mr. Huffman's name up? In what way  
22 did he do that?

23 A That he had been talking with Mr. Huffman, and that  
24 he understood that Mr. Huffman and I had made contact with  
25 Steve Mayer in the past.

26 Q Did he tell you how he got your name?

27 A No. I assumed he got it from Jesse.

28 Q He didn't tell you that?

1 A I just made the assumption that he got it from Jesse  
2 if he had been talking to Jesse.

3 Q Did he ask you if you knew Steve Mayer?

4 A Yes.

5 Q What did you say? A Yes.

6 Q How did you first meet Mr. Mayer?

7 A I first met him through a telephone call.

8 Q When was that, sir?

9 A Approximately November, '73.

10 Q Who called whom?

11 A Steve called me.

12 Q Do you know where he was calling from?

13 A He said it was from CYAN Engineering, identified him-  
14 self as CYAN Engineering.

15 Q Did you ever met him personally?

16 A Yes.

17 Q When, the first time?

18 A It was approximately December.

19 Q Where did that meeting take place?

20 A At Cramer Electronics.

21 Q Was this a prearranged meeting that he was to come in  
22 and see you? A Yes.

23 Q At that time were you in field sales for Cramer?

24 A Yes.

25 Q Did he tell you why he called you?

26 A That he had gotten my name from purchasing people at  
27 Atari.

28 Q Had you previously been calling on Atari as a customer

1 for Cramer Electronics?

2 A Yes.

3 Q Why did he call you? Why did he call you at Cramer  
4 Electronics? What was he interested in?

5 A He was interested in several product lines, and I can't  
6 recall everything he asked, but there was -- Signetics was  
7 one of the lines he asked about, and Intel was one definitely,  
8 and there were others, but I can't really recall.

9 Q Any particular products of those companies, either one  
10 of them?

11 A Signetics was basically on TTL products, and Intel was  
12 on their microprocessor sets.

13 Q On the occasion of this first telephone call, did  
14 microprocessors come up?

15 A Yes.

16 Q Who brought it up?

17 A Steve.

18 Q What did he say?

19 A I can't recall.

20 Q Did he seem to know what they were?

21 A Yes.

22 Q Did you?

23 A My knowledge was only of a part number and it being a  
24 microprocessor was about all I could acknowledge.

25 Q Did they want to buy some, or did he want to find out  
26 about them?

27 A He just wanted some more information about Intel in  
28 general.



1 Q About Intel. And about Signetics, did he want to buy  
2 some parts or what?

3 A He was interested in certain product lines, and I  
4 recognized he was an engineer, and engineers don't buy  
5 anything.

6 Q What do you mean by that?

7 A An engineer doesn't place a P.O.

8 Q That's what you mean by buying, actually placing a  
9 purchase order? A Right.

10 Q But they identify parts they're interested in, don't  
11 they, and --

12 A True, but that question is asked continually.

13 Q They asked for spec sheets?

14 A Sure.

15 Q And descriptions?

16 A Samples. He was a great one asking for samples.

17 Q Did he ask for samples in '73?

18 A I don't recall.

19 Q Did he ever ask for samples of microprocessors?

20 A Yes. We did not sample microprocessors at that time.  
21 They were very high cost.

22 Q Did he ever ask for samples of microprocessors ever?

23 A No.

24 Q Did he seem to know what he was talking about?

25 A He knew a lot more than I did.

26 Q He seemed to know what a microprocessor was?

27 A To the best of my knowledge, but I couldn't really  
28 identify whether he was right or wrong.

1 Q But it was greater than the knowledge you had at that  
2 time? A Yes.

3 Q On this occasion of this first visit to Cramer, Cramer  
4 was in Sunnyvale at that time?

5 A True.

6 Q How long did he stay?

7 A I don't recall the amount of time he spent there.

8 Q Was anybody other than Mr. Mayer and yourself involved  
9 in that visit at that time?

10 A Yes.

11 Q Who?

12 A Doug Dexter and Joe Meringo.

13 Q Where did you tell me that Ambassador Travel is, what  
14 city?

15 A Santa Clara.

16 Q Where is Mr. Nustater -- I'm sorry, Mr. Dexter, where  
17 is he now, do you know?

18 A I know he's living in Los Angeles. I think he's look-  
19 ing for a job.

20 Q Any kind of demonstration given to Mr. Mayer on the  
21 occasion of this first visit?

22 A I think it was basically a tour of Cramer and familiariza-  
23 tion of what we were doing.

24 Q What was Cramer doing?

25 A They were distributing.

26 Q Does that mean they warehoused parts?

27 A True.

28 Q Did they have demonstration facilities of any kind?

1 A Yes.

2 Q Was he shown those?

3 A We didn't -- at that time we were just setting up  
4 demonstrations. That's when Intel systems were coming out,  
5 and that was our first.

6 Q When you said Intel systems had just come out, were you  
7 having reference to Intel microprocessors or other Intel  
8 products as well?

9 A I don't think I understand the question.

10 Q You said Intel was just -- you were just setting up  
11 your demonstration center at that time because that's  
12 when Intel was just coming out at that time. What kind of  
13 Intel products are you talking about?

14 A At that time I think it was the MDS-8. That's just --  
15 that's the best of my recollection is it was an MDS-8.

16 Q What is an MDS-8, sir?

17 A Basically a system that would simulate what the micro-  
18 processor would do for the customer.

19 Q Was Intel selling microprocessors at that time?

20 A Yes.

21 Q What microprocessor were they selling at that time?

22 A 8008.

23 Q Are you sure of that?

24 A Not positive, no. They were also selling the four bit  
25 processor, which was the four thousand series.

26 Q But you think it was the eight thousand that you were  
27 showing Mr. Mayer in --

28 MR. WELSH: I don't think he said he showed him any.

1 MR. GOLDENBERG: I withdraw that question.

2 Q BY MR. GOLDENBERG: But you think the Intel was selling  
3 the 8008 system in December of 1973?

4 A That's the best of my memory.

5 Q Had you previously called on Atari on the premises in  
6 connection with your Cramer sales activity, prior to this  
7 Mayer visit?

8 A I think I answered that earlier, yes.

9 Q Where were those facilities, sir, that you visited  
10 Atari? Where were they?

11 A The first time I visited Atari?

12 A Yes, sir.

13 Q Scott Boulevard in Santa Clara.

14 Q This was before your meeting with Mr. Mayer?

15 A Long before.

16 Q How much before?

17 A It was very close to the date that I started with Cramer.

18 Q Would it be very close to the date you started as a  
19 field salesman?

20 A No, my first contact with Atari was inside sales.

21 Q That would have been in '72?

22 A True.

23 Q Why did you call on Atari then? I thought you were  
24 inside sales then.

25 A Many times in this business the inside salesman will  
26 travel to an account with the outside salesman to get a  
27 face-to-face contact.

28 Q Did you call on purchasing people at Atari or engineering

1 people or both? A Both.

2 Q Had you made any calls on Atari when you assumed your  
3 position as field salesperson?

4 A Yes.

5 Q And where did you call on Atari then, what location?

6 A Martin Avenue.

7 Q In what city?

8 A Santa Clara.

9 Q Did they still have the Scott Boulevard office?

10 A No.

11 Q That had been closed?

12 A True.

13 Q Who did you call on in those occasions, engineering or  
14 purchasing people? A Both.

15 Q Were those frequent visits?

16 A Yes.

17 Q When did you first hear of CYAN Engineering?

18 A It was around the first time that Steve Mayer called me.

19 Q So when you had called on Atari earlier, you never  
20 heard of CYAN Engineering?

21 A No. I knew there was a group somewhere, but I did not  
22 have the information CYAN Engineering.

23 Q So when Mr. Mayer called you, he identified himself as  
24 being with CYAN Engineering, and that was part of an Atari  
25 organization?

26 A That he had connections with Atari.

27 Q Connections with Atari. Did you ever find out what  
28 those connections were?

1 A No.

2 Q Do you know today?

3 A No.

4 Q The occasion that Mr. Mayer first called on you, did he  
5 take away anything with him?

6 A No. Not to my memory.

7 Q During the occasion of this first visit, you said Mr.  
8 Dexter and Mr. Meringo were -- participated in that visit,  
9 is that correct?

10 A That's correct.

11 Q Were they there the entire time of Mr. Mayer's visit,  
12 or were you with him by yourself for a period or what?

13 A I think I was with him by myself for a period.

14 Q But were they there for most of the visit?

15 A I don't remember.

16 Q To your knowledge, sir, did either of those gentlemen  
17 that time have any understanding or knowledge about micro-  
18 processors to your knowledge, sir, your impressions as to what  
19 they knew about them?

20 A Probably very little.

21 Q As great as yours?

22 A Probably greater.

23 Q The occasion of that visit, did you -- of the four  
24 people that participated, who did you think had the greatest  
25 knowledge of microprocessors?

26 MR. WELSH: Objection to the question as lacking  
27 a foundation.

28 MR. MORLEY: If you know.



1 MR. GOLDENBERG: If you formed an impression.

2 MR. WELSH: May I complete my objection.

3 MR. GOLDENBERG: I understand it. I'm going to  
4 rephrase the question, but if you want to, you go ahead.

5 MR. MORLEY: He's going to rephrase the question.  
6 I think that will take care of it.

7 Q BY MR. GOLDENBERG: If you formed an impression at that  
8 time of the four people participating in this meeting as  
9 to who had the greatest knowledge of microprocessors, what  
10 was that impression?

11 MR. MORLEY: That's a two part question. First,  
12 have you formed an impression. Secondly --

13 Q BY MR. GOLDENBERG: If you formed no impression at that  
14 time, indeed that's the end of the question.

15 A I don't think I formed an impression.

16 Q But I think it's your testimony that on the occasion  
17 of that visit, Mr. Mayer did seem to have some knowledge of  
18 microprocessors greater than yours?

19 A Just that he was asking the question about microproces-  
20 sors was more than my knowledge at that time.

21 Q Were you able to answer his questions?

22 A No.

23 Q Was Mr. Dexter?

24 A I don't remember him being asked the questions.

25 Q Was Mr. Meringo asked any questions?

26 A Not to my memory.

27 Q You were the only one asked any questions?

28 A Yes.

1 Q And you weren't able to answer them?

2 A True.

3 Q On the occasion of that visit, did Mr. Meringo say what  
4 his interest in microprocessors was?

5 A No.

6 Q What he was going to do with them?

7 A No.

8 Q Did he tell you what the business of CYAN Engineering  
9 was?

10 A Just that it was an engineering group.

11 Q That's all? A True.

12 Q He didn't tell you what kind of products they engineered  
13 or were interested in?

14 A No.

15 Q Did you form any impression as a result of this Atari  
16 connection?

17 A My impression was they were a consultant group for Atari.

18 Q What kinds of products, sir?

19 A Games.

20 Q Did you know Atari to be in any other kind of business  
21 at that time? A No.

22 Q Did he tell you where CYAN Engineering was?

23 A Yes.

24 Q Where did he tell you?

25 A That they were in Grass Valley.

26 Q Did you know where Grass Valley was?

27 A Yes.

28 Q How did you know that?

1 A I have lived in California all my life.

2 Q You knew where it was?

3 A Yes.

4 Q Did he tell you how big CYAN Engineering was in terms  
5 of number of people? A No.

6 Q Didn't tell you anything about it?

7 A No.

8 Q You didn't ask? A No.

9 Q Why not?

10 MR. WELSH: Objection. Assumes he mentioned a  
11 reason to think about it.

12 Q BY MR. GOLDENBERG: Well, if you didn't think about  
13 it, that's an answer.

14 A I didn't think about it.

15 Q Is that your best recollection, sir, as to why you didn't  
16 ask any questions about this potential customer?

17 MR. WELSH: Objection. He said he didn't even think  
18 about it.

19 MR. GOLDENBERG: I'm asking if that's --

20 MR. WELSH: Lacks the foundation, that he had a  
21 reason.

22 Q BY MR. GOLDENBERG: I would ask again, sir, and so you  
23 might understand, sir, that Mr. Welsh has the right to make  
24 objections. I can, if I choose to, rephrase my questions,  
25 and perhaps on occasion I will do that. However, you should  
26 go ahead and answer the question as best you can unless Mr.  
27 Morley instructs you.

28 MR. MORLEY: I don't see any reason not to answer

1 the question. Answer to the best of your recollection if  
2 you have a recollection. If you don't have a recollection,  
3 say you don't have a recollection.

4 THE WITNESS: I don't have a recollection on that.

5 Q BY MR. GOLDENBERG: When you met a new potential customer,  
6 aren't you usually interested in what their business is?

7 MR. WELSH: I object to that question.

8 MR. GOLDENBERG: Can I finish it?

9 MR. WELSH: Sure.

10 Q BY MR. GOLDENBERG: Usually when you met a new potential  
11 customer, sir, aren't you interested in what their  
12 business is, what they are going to use your products for?

13 A I knew he was not a user but a consultant firm or a  
14 design center or consultant to the outside world.

15 Q How did you know that?

16 A He told me.

17 Q Did he tell you they consulted for companies other than  
18 Atari?

19 A He didn't tell me he consulted for companies other than  
20 Atari. I found that out later.

21 Q I thought when he first called he identified himself  
22 as having a connection with Atari. Did I misunderstand you?

23 A Yes, I did. He did identify himself as doing some work  
24 for Atari. True.

25 Q Did you form an impression that he was consulting for  
26 other companies as well?

27 A No.

28 Q You knew Atari was in the game business?

1 A True.

2 Q What was the next contact you had with Mr. Mayer after  
3 this meeting in December, '73?

4 A The first contact was in November.

5 Q That was the telephone contact?

6 A True. He visited Cramer because he was here to go to  
7 an Intel seminar that was put on by Intel, and we were asked  
8 to get customers to attend this seminar.

9 Q So the visit to Cramer was incidental to attendance in  
10 the seminar? A True.

11 Q He didn't come down from Grass Valley --

12 A Not to specifically visit Cramer.

13 MR. MORLEY: Make sure you finished your answer.

14 MR. GOLDENBERG: I apologize. I'll try to watch  
15 that, sir. I don't want to interrupt your answer.

16 Q BY MR. GOLDENBERG: What was the substance of this first  
17 telephone conversation that you had with him?

18 MR. WELSH: I think you've asked that.

19 MR. GOLDENBERG: Well, it has gotten a little  
20 confusing to me.

21 Q BY MR. GOLDENBERG: What was the relationship between  
22 Cramer, yourself and Mr. Mayer's attendance at this seminar?

23 MR. WELSH: Object to the question as lacking a  
24 foundation that there was such a relationship.

25 Q BY MR. GOLDENBERG: Well, I don't -- was there a relation-  
26 ship, sir, between Cramer and yourself and this Intel seminar?

27 A Yes.

28 Q What was that relationship?

1 A The relationship was that we knew about it, and we were  
2 asked to give out flyers on this seminar to our customers  
3 that we were presently calling on.

4 Q Did you give a flyer to Mr. --

5 A Yes, I did.

6 MR. MORLEY: Wait until he finishes the question.  
7 I'm cautioning my witness, my client to wait until you finish  
8 your question, because I think your question, the thrust of  
9 your question may have changed in mid stream there.

10 Q BY MR. GOLDENBERG: Did you give a flyer to Mr. Mayer  
11 about the Intel seminar?

12 A I sent him one after the first phone call.

13 Q Did you do anything other than that in connection with  
14 the seminar? A No.

15 Q You say in your affidavit and that's this Exhibit CF,  
16 let me read that to you: "I arranged for Steve Mayer to  
17 attend an Intel microprocessor seminar which was held in  
18 about December, 1973."

19 MR. WELSH: I suggest if you are going to ask  
20 questions about the affidavit that the witness be permitted  
21 to observe it.

22 MR. MORLEY: I'll save counsel -- I have a copy.

23 Q BY MR. GOLDENBERG: This is the first sentence of  
24 Paragraph 5 that I just read, and you then go on to say, sir,  
25 continuing, "I contacted Steve Mayer, persuaded him to  
26 attend the Intel seminar, because I was told by Intel per-  
27 sonnel about the existence of such seminar, and they encour-  
28 aged me to persuade my customers to attend."



1 A True.

2 Q Is that statement true?

3 A True.

4 Q How did you persuade him?

5 A By telling him about the seminar after the first con-  
6 tact he made with me asking about Intel products.

7 Q I thought you said a moment ago that all you had done  
8 was to send him a flyer about the seminar.

9 A I didn't say that was all I did.

10 Q Let's understand this, sir. The first contact you've  
11 had was in November with a telephone call from Mr. Mayer.

12 A True. There were many phone calls.

13 Q And there were a number of phone calls that followed.

14 A True.

15 Q And who initiated those phone calls?

16 A Steve Mayer.

17 Q How did you arrange for him to attend the seminar?

18 A By sending him the application and the flyer on the  
19 seminar.

20 Q So that was the extent of your arrangement?

21 A True.

22 Q Now, at that time Mr. Mayer was not or CYAN Engineering  
23 were not customers of Cramer, were they?

24 A True.

25 MR. WELSH: Could I have that question back.

26 (Whereupon, the record was read by the Reporter.)

27 Q BY MR. GOLDENBERG: Who wrote this affidavit, sir?

28 A. Jerry --

1 MR. MORLEY: If you know.

2 THE WITNESS: As far as I know, Jerry Schnayar did.

3 Q BY MR. GOLDENBERG: Are these his words or yours in the  
4 affidavit?

5 A They were answers to questions he asked me.

6 Q When you spoke to Mr. Schnayar about the matter, did  
7 you tell him that you arranged for Mr. Mayer to attend the  
8 seminar, are those your words?

9 A Yes, they are.

10 Q When you said you persuaded him to attend the seminar,  
11 are those your words?

12 A Yes, they are.

13 Q How did you persuade him?

14 MR. WELSH: Objection.. You have already asked  
15 and answered that question.

16 MR. GOLDENBERG: No, sir. I've heard reference to  
17 a number of phone calls.

18 Q BY MR. GOLDENBERG: What did you say to him to persuade him?

19 A I just made it -- made him aware that the seminar was  
20 taking place, and I sent him an application for that seminar.

21 Q Did he have to be persuaded?

22 MR. WELSH: Objection.

23 THE WITNESS: Choice of words.

24 Q BY MR. GOLDENBERG: Persuaded overstates it a little  
25 bit, doesn't it?

26 A Probably.

27 Q If you were to do this again, you perhaps wouldn't use  
28 that word?

1 A Possibly.

2 Q And arranged overstates it a little bit, doesn't it?

3 MR. WELSH: I object to the question as leading.

4 MR. GOLDENBERG: Go ahead and answer the question.

5 Q BY MR. GOLDENBERG: Arranged overstates it a little  
6 bit, too, doesn't it, sir?

7 A I don't have a good answer for that.

8 Q Can you answer yes or no?

9 A Not if I don't have a good answer.

10 Q You can't answer the question?

11 MR. MORLEY: We have now become a bit confused  
12 the whether is whether he can or cannot say whether he  
13 arranged for it. I think we are getting a little bit  
14 confusing. We have double negatives, I believe, besides.  
15 I think the question is whether or not the word arranged is  
16 appropriate to the -- is appropriate at this time.

17 MR. GOLDENBERG: I think that's essentially right,  
18 Mr. Morley, and I accept that. However my question,  
19 sir, started this.

20 Q BY MR. GOLDENBERG: When you say you arranged for him to  
21 attend the seminar, that overstates it.

22 A I still can't answer that question.

23 Q Why not?

24 A Because I think we are getting into vocabulary instead  
25 of answering the question. That goes back to my eighth  
26 grade grammar. What word do you use, persuade, arrange.

27 Q Did you make a reservation for him to attend the seminar?

28 A No. He did that himself.

1 Q Did you fill out the form?

2 A No, I didn't.

3 Q You did no more than send him the form; isn't that true?

4 A And made him aware verbally.

5 Q In a telephone conversation?

6 A True.

7 Q More than one telephone conversation?

8 MR. GOLDENBERG: He's already testified to that.

9 THE WITNESS: There were many conversations on the  
10 phone.

11 Q BY MR. GOLDENBERG: All about this seminar?

12 A No.

13 Q About other things?

14 A There was always other things. There was hundreds of  
15 questions asked about different products that Cramer  
16 represented.

17 Q Any questions about microprocessors?

18 A Yes.

19 Q Were you able to answer them?

20 A No.

21 MR. WELSH: Counsel, you have --

22 Q BY MR. GOLDENBERG: I'm talking about the telephone  
23 conversation, sir.

24 A That's all there were in November.

25 Q That's what I'm talking about. You understand I'm  
26 inquiring about these telephone conversations in November,  
27 and in the course of those telephone conversations, if I  
28 understand your testimony, Mr. Mayer was asking you questions

1 about microprocessors.

2 A True. That's why I suggested he go to the seminar and  
3 find out through the seminar what Intel is actually doing,  
4 because I did not have the expertise to do that.

5 Q What kinds of questions was he asking you? Was he  
6 asking you technical questions or questions about price,  
7 delivery or what?

8 A Technical questions.

9 Q Did you attempt to get answers from any of those  
10 questions from him from anybody?

11 A No. I suggested he go to the seminar.

12 Q You never picked up the phone and talked to an Intel  
13 person and say, "I have a potential customer who's got these  
14 questions"?

15 MR. WELSH: Are you still talking about the phone  
16 call, the period of the phone call?

17 THE WITNESS: Yes, I did. I contacted Jesse Huffman.

18 Q BY MR. GOLDENBERG: Did Mr. Huffman give you any informa-  
19 tion over the phone that you could pass on to Mr. Mayer?

20 A I asked that he call Mr. Mayer.

21 Q Did he to your knowledge?

22 A To the best of my knowledge, yes.

23 Q In this period of November?

24 A True.

25 Q Any time you want a recess or break, sir --

26 A I just as soon go on. I'm busy.

27 Q Would you show the witness the affidavit CF and Para-  
28 graph 6. First sentence. "I first met Steven Mayer

1 approximately three or four months prior to the time that he  
2 attended the Intel seminar referred to in Paragraph 5 above."  
3 Now, I thought your testimony had been earlier this morning  
4 the first time you met him was the occasion of this visit to  
5 Cramer Electronics at the time of the seminar.

6 A True.

7 Q So that statement is in error?

8 A True.

9 Q The statement that I read from the affidavit is in error?

10 A That's true.

11 MR. MORLEY: Inaccurate.

12 MR. GOLDENBERG: Let's say inaccurate. I restate  
13 my question to use the word inaccurate rather than in error.

14 Q BY MR. GOLDENBERG: You make no reference in the affidavit  
15 to Mr. Mayer's visit to Cramer at the time of the seminar.  
16 Take your time, sir, and look at it, and tell me if that's  
17 -- if I'm correct.

18 A It doesn't say that.

19 Q Take your time, sir.

20 MR. WELSH: Could I have that question again,  
21 please. You are talking about the entire affidavit?

22 MR. GOLDENBERG: The entire affidavit, and I have  
23 asked the witness to look at the entire affidavit.

24 THE WITNESS: No, I don't see.

25 MR. WELSH: I would like to call the attention of  
26 the witness to the last sentence in Paragraph 5.

27 MR. MORLEY: That would seem to be Intel as opposed  
28 to Cramer.

1 THE WITNESS: True.

2 Q BY MR. GOLDENBERG: With respect to the last sentence in  
3 Paragraph 5, sir, how do you know he visited Intel?

4 A I was told he did.

5 Q So you don't know that?

6 A I was not present.

7 Q So you don't know whether he was there or not, sir?

8 MR. MORLEY: Other than the fact he stated he was  
9 told. Now to his own personal knowledge.

10 MR. GOLDENBERG: That's all I want.

11 THE WITNESS: My own personal knowledge, no.

12 Q BY MR. GOLDENBERG: Who at Intel encouraged you to  
13 persuade your customers to attend the seminar?

14 A Who personally at Intel?

15 Q Who at Intel encouraged you to persuade your customers  
16 to attend this --

17 A No one.

18 Q No one did that?

19 A Not me personally.

20 Q Perhaps my question is not clear, sir. I want to know  
21 who at Intel encouraged you to persuade your customers to  
22 attend the seminar.

23 MR. MORLEY: If anyone.

24 THE WITNESS: No one. I was encouraged by my  
25 management.

26 Q BY MR. GOLDENBERG: Well, I direct your attention to --  
27 again to Paragraph 5, and at the top of the page, the pages  
28 aren't numbered, let me read the entire sentence. "I

1 contacted Steve Mayer and persuaded him to attend the Intel  
2 seminar because I was told by Intel personnel about the  
3 existence of such seminar, and they encouraged me to  
4 persuade my customers to attend." Is that statement

5 therefore inaccurate to the extent that it says that Intel  
6 encouraged you personally to persuade customers to attend?

7 A I think we are getting down to semantics here. Intel  
8 is a company who put on a seminar. Intel as a company  
9 persuaded my management, which in turn persuaded me to ask  
10 customers to attend a seminar. There is no one person  
11 involved in this.

12 Q I understand, sir, but can you agree with me that what  
13 you just said is not what appears in the affidavit?

14 MR. MORLEY: I think that is getting argumentative,  
15 counsel, and you did ask the question, and I think the ques-  
16 tion has been answered that he was not contacted by anyone  
17 directly from Intel. You can draw your own conclusions from  
18 that, sir. I don't think you need to ask the witness to  
19 draw conclusions.

20 MR. GOLDENBERG: I am entitled to seek the  
21 witness's agreement. If he can't give it to me -- the  
22 statement as it appears in the affidavit is not completely  
23 accurate.

24 THE WITNESS: I think things can be read into  
25 that statement, true.

26 Q BY MR. GOLDENBERG: What --

27 A I think things can be read into that statement.

28 Q One would have to read things into it to make it true,



1 or accurate; is that correct?

2 MR. WELSH: I think the same objection that counsel  
3 made is applicable here. It's becoming argumentative.

4 THE WITNESS: I think you could read into it and  
5 make it true or false depending on what you want to read into  
6 it.

7 MR. GOLDENBERG: Meaningless.

8 MR. MORLEY: What?

9 MR. GOLDENBERG: The statement is meaningless; is  
10 that what you are saying, sir?

11 MR. MORLEY: That's not what he said, counsel.  
12 Ask him the questions directly. Ask him the facts. Please  
13 don't ask him to interpret. I think we will be wasting a  
14 good deal of time.

15 MR. GOLDENBERG: Mr. Morley, the problem is the  
16 witness did make the affidavit. Certain statements have  
17 been made. These things are represented to the patent office  
18 as being factual.

19 MR. MORLEY: Certainly.

20 MR. GOLDENBERG: If they're not completely accurate,  
21 I think it's a reasonable thing for us to explore. If they  
22 are completely accurate, I think we're entitled to know  
23 that, and I don't think I am doing anything other than that,  
24 sir. I truly don't.

25 MR. MORLEY: No question about it. You are entitled  
26 to ask him if any parts of the statement might be inaccurate  
27 and ask him facts and respond to the facts. The conclusions  
28 you draw from those facts are something else.

1 MR. GOLDENBERG: But the witness said you can read  
2 things into it and make it true, you can read things into it  
3 and make it false.

4 MR. MORLEY: That was in response to your question,  
5 sir, that he was not able to respond to.

6 Q BY MR. GOLDENBERG: But in any case, what you have told  
7 us about how people were encouraged to attend the seminar  
8 is your -- is your present recollection of what the facts  
9 were, is that true?

10 A True.

11 Q Going back to Mr. Schnayar, you had a telephone  
12 conversation with him several days before this affidavit  
13 was prepared; is that correct?

14 A True.

15 Q Where was he at the time?

16 A I don't know.

17 Q You don't know where he was calling from?

18 A No.

19 Q What was the next contact you had with Mr. Schnayar  
20 after that telephone conversation?

21 A He met me in my office.

22 Q When was that, sir? If you want to relate it to the  
23 execution of the affidavit --

24 A It was sometime in February.

25 Q Weekday? A Yes.

26 Q What time of the day was it; do you recall?

27 A No, I don't.

28 Q How long was this meeting?

1 A Hour and a half, approximately. I don't really remember  
2 exact.

3 Q Go to lunch with him or anything?

4 A No.

5 Q What did he say to you on the occasion of this meeting?

6 A What did he say to me?

7 Q Uh-huh.

8 A He just told me that he had talked to Jesse Huffman.  
9 He was trying to put the sequence of events together on what  
10 happened.

11 Q Did he tell you what the controversy was about, sir?

12 A No. Other than that there was -- I kept asking that  
13 question, what is this about, and I was -- I'm vague as of  
14 today what it is really about.

15 Q Did he tell you why -- what he wanted to talk to you  
16 about specifically?

17 A Was just my contact or my -- why. I was involved with  
18 Jesse Huffman and what we did together.

19 Q Who brought up the name Steve Mayer first? Was it you  
20 or Mr. Schnayar?

21 A Mr. Schnayar.

22 Q What did he say when he brought up Mr. Mayer's name?

23 MR. WELSH: What time are you talking about, counsel,  
24 because in the first phone call he testified he talked,  
25 Mr. Schnayar mentioned Mr. Mayer.

26 Q BY MR. GOLDENBERG: Let's take the first phone call.

27 A I was asked whether I knew Mr. Mayer in the first  
28 phone call, and I said yes.

1 Q Was there anything else said in the conversation?

2 MR. WELSH: I think you are covering the same  
3 ground.

4 THE WITNESS: No.

5 Q BY MR. GOLDENBERG: On the occasion of your visit in your  
6 office, did Mr. Mayer's name come up again?

7 A Yes.

8 Q Who brought it up?

9 A I don't really recall, but I think it was Jerry.

10 Q What connection did he bring up Mr. Mayer's name?

11 A It was the business that Jesse Huffman and I had with  
12 Steve Mayer.

13 Q Did he ask you questions?

14 A Yes, he did.

15 Q Did he tell you things that he had picked up from other  
16 people?

17 A Yes, he did.

18 Q What did he tell you?

19 A That Jesse Huffman had some recollection, but it was  
20 eight years ago, and he was just trying to jog my memory of  
21 what happened. This happened eight years ago. I have  
22 contacts like this daily. I don't remember everything that  
23 is said or done.

24 Q Mr. Schnayar was trying to jog your memory?

25 A Yes, he was.

26 Q How did he go about that?

27 A Asking if I remember making calls on Jesse Huffman with  
28 Steve Mayer.

1 Q Did he tell you Huffman had said you had made calls?

2 A Yes.

3 Q Before he asked you -- told you Mr. Huffman had said  
4 you had made such calls, did you have any independent  
5 recollection of that, sir?

6 A Could you repeat that question.

7 Q Before Mr. Schnayar said to you that Mr. Huffman had  
8 said that you and he had made calls on Steve Mayer, did you  
9 have any independent recollection?

10 A Yes, I did.

11 Q What else did he say, Mr. Schayar, on the occasion of  
12 this meeting in the office?

13 A I don't think I understand what you are asking. What  
14 else did he say?

15 Q Yes, sir. I would like to know to the extent that you  
16 can recall, and let me put it this way: The entire conversa-  
17 tion between you and Mr. Schnayar on that occasion, who said  
18 what, what did he say to you?

19 A He asked many of the same questions that you're asking  
20 today, what happened on phone calls, what were asked in  
21 phone calls, did he ask about microprocessors, did he ask  
22 about -- what did he ask about.

23 Q You remembered and gave him answers?

24 A Yes.

25 Q Anything else take place on the occasion of that  
26 meeting?

27 A Not that I remember.

28 Q Did he ask you to make the affidavit on that occasion?

1 A No, he didn't.

2 Q When did he do that?

3 A Couple of days later.

4 Q Was this done calling on you in person or was this a  
5 telephone call?

6 A It was calling on me in person.

7 Q So a couple of days later there was a second meeting  
8 with you in your office again?

9 A Yes.

10 Q How long did that meeting last?

11 A Couple of hours.

12 Q What occurred during that meeting in terms of what Mr.  
13 Schnayar said to you, what you said to him?

14 A He asked if he could take -- he had taken notes from  
15 the first meeting and asked, "Do you feel like you could  
16 sign an affidavit on these comments?" and I said, "Yes," and  
17 we went out and had it signed.

18 Q When he came to the second meeting, he had the affidavit  
19 written up already? A Yes.

20 Q That was the first time you saw it?

21 A Pardon?

22 Q That was the first time you saw the affidavit?

23 A Yes.

24 Q When he showed you the affidavit, did you ask him why  
25 he wanted an affidavit?

26 A I asked questions of what this meant, and I said was this  
27 going to come back to me and bother me, and he said he didn't  
28 think so. It had nothing to do with Atari. My concern is

1 my relationship with Atari. Anything else I don't really  
2 care about. I was helping someone that was asking for help.

3 Q He said it had nothing to do with Atari?

4 A True.

5 Q Were you aware, sir, at that time that Bally has charged  
6 Atari with infringement of the same patent that they're  
7 suing my client on?

8 A No.

9 Q You weren't told that?

10 A No.

11 Q Did he tell you what he was going to do with the  
12 affidavit? A No.

13 Q You didn't ask him?

14 A No.

15 Q Do you make affidavits with people walking in your  
16 office?

17 A It's the first time I have ever had anything like this  
18 happen. I made a mistake by not contacting my lawyer sooner,  
19 and that's why I'm sitting here today.

20 Q It turns out that way sometimes.

21 A Sure does. Won't happen again.

22 Q I would direct your attention to Paragraph 7 of the  
23 affidavit. Are you sure about that date as to when the --  
24 Mr. Mayer offered -- ordered the Intel intellect systems?

25 MR. WELSH: I object to the question. I don't  
26 believe there's any specific date there. It states a  
27 general time frame rather than a date.

28 Q BY MR. GOLDENBERG: Are you sure about that time,

1 sir, that's when the order, Mr. Mayer ordered such a system?

2 A No, I'm not.

3 Q Could it have been earlier?

4 A It could have been.

5 Q A month earlier?

6 A Could have been.

7 Q Two months earlier?

8 A Possibly.

9 Q Who suggested that phrase "In about March, 1974"?

10 MR. MORLEY: I don't think he's indicated that  
11 it's anything other than his still present recollection.

12 MR. GOLDENBERG: I understand that, sir, but my  
13 question goes who selected this phrase "In about March, 1974"?  
14 Was that you, or was that Mr. Schnayar?

15 MR. WELSH: Counsel, you have asked the question  
16 further about who composed this, and the witness said Mr.  
17 Schnayar composed it and that it reflected his recollection  
18 of the facts as he had expressed them to Mr. Schnayar.

19 MR. GOLDENBERG: Are you objecting, sir?

20 MR. WELSH: Yes, I am objecting, no foundation.

21 MR. GOLDENBERG: Why don't you do that, sir, and  
22 we can get on with it.

23 MR. WELSH: That particular phrase was suggested  
24 by either, but he did, in effect, answer the question  
25 previously when he said that he did not compose the affidavit,  
26 but that it reflected the answers that he gave.

27 Q BY MR. GOLDENBERG: Mr. Thomas, did you -- did anybody  
28 other than you and Mr. Schnayar have anything to do with this



1 affidavit to your knowledge, sir?

2 A Yes.

3 Q Who?

4 A Jesse Huffman.

5 Q How did Jesse Huffman get involved in this affidavit?

6 A I called Jesse on the phone and asked him to help me  
7 jog my memory and jog his memory. We had conversations about  
8 this, trying to put it in perspective.

9 Q All right, sir, let's go into that. When was your first  
10 conversation with Mr. Huffman about this matter, and by this  
11 matter, I mean these events, the affidavits we are concerned  
12 with?

13 A Immediately after the conversation with Jerry on the  
14 phone.

15 Q That same day? A Yes.

16 Q Where is Mr. Huffman located?

17 A Truckee, California.

18 Q What's he doing there, to your knowledge?

19 A I think he's looking for a job right now.

20 Q So you had a telephone conversation with Mr. Huffman?

21 A True.

22 Q More than one? A Yes.

23 Q How many, sir? About this matter.

24 A Probably two or three.

25 Q Over what time span, and the first one came after your  
26 first telephone call from Mr. Schnayar. When was the last  
27 one?

28 A Approximately a month ago.

1 Q There were two or three, so there were two or three in  
2 the time period from February of 1981 to July of 1981?

3 MR. MORLEY: Not '81. February, '81 to July, '81

4 THE WITNESS: True.

5 Q BY MR. GOLDENBERG: Is that correct?

6 A That's correct.

7 Q Who initiated these telephone calls?

8 A I did.

9 Q Why?

10 A To try and find out -- first of all, the first conversation  
11 was what is this all about, and then from then, it was trying  
12 to put our heads together of what the events, how they  
13 really happened, the sequence of events, because we were  
14 involved in this thing, together, as far as our contacts  
15 from Steve Mayer.

16 Q Why did you make the phone calls?

17 MR. WELSH: He just answered the question.

18 Q BY MR. GOLDENBERG: What was your reason in doing this,  
19 and I understand that. What made you want to find out -- why  
20 did you devote this time and effort to this thing?

21 A To try and give as close as accurate sequence of events  
22 as I remembered them, because eight years ago I don't  
23 remember everything that happened.

24 Q So really what we see in the affidavit, is this a fair  
25 statement, sir, and if it didn't -- doesn't really reflect  
26 in its entirety your own independent recollection, but the  
27 result of a number of telephone conversations that you had  
28 with Mr. Huffman about the matter?

1 A I would think that's true.

2 Q Can you with reference to the affidavit, and take your  
3 time, sir, and tell me as you recall now which of the various  
4 statements made in here came really from Mr. Huffman rather  
5 than from your own recollection, sir.

6 MR. MORLEY: I don't think -- if I may first. I  
7 do not think that's an accurate characterization of his  
8 testimony. I believe he said this is his recollection, the  
9 best he remembers at the time that he signed it, and at the  
10 present time. He also testified that he called Mr. Huffman  
11 to have him help jog his memory. Now, that does not mean  
12 that the affidavit itself is not anything other than the  
13 witness's best recollection after having his memory jogged  
14 by Mr. Huffman, and you are implying to the contrary.

15 MR. GOLDENBERG: I can have the previous question  
16 and answer read back, sir, and if you care to hear it, and  
17 I think you would --

18 MR. KATZ: Can we hear it.

19 MR. MORLEY: I would ask the witness if that is  
20 perfectly accurate, if this contains statements of Mr.  
21 Huffman of which he has no recollection whatsoever, or if  
22 it's a statement all of his recollection after having his  
23 memory jogged by Mr. Huffman. Read that question.

24 MR. GOLDENBERG: I do want you to have the question  
25 and answer read back. Let's do that, and we'll go on from  
26 there.

27 (Whereupon, the record was read by the reporter.)

28 MR. MORLEY: Now --

1 MR. GOLDENBERG: Can I talk to you, sir, out of  
2 the hearing of the witness about where we go from here on  
3 this one?

4 MR. MORLEY: I don't see any reason why you need  
5 to talk to me out of the hearing of the witness. All con-  
6 versations I would have with you --

7 MR. GOLDENBERG: I'll put it this way, sir --

8 MR. MORLEY: I want him to be absolutely sure  
9 he's answering questions as accurately as he possibly can.  
10 It's the first time he's had his deposition taken, counsel.

11 MR. GOLDENBERG: Surely. I understand that, sir,  
12 and that's what you're about to say to the witness. I have  
13 no problem with that. I encourage it.

14 MR. MORLEY: That's all I'm saying.

15 Q BY MR. GOLDENBERG: Did you understand what Mr. Morley  
16 is saying to you, sir, that any time you answer a question,  
17 it must be answered just to the best of your knowledge, and  
18 all I can seek, sir, is your best recollection?

19 A That's all that I have.

20 Q Do you ever visit Grass Valley, and if I have asked  
21 that question before, I apologize, sir.

22 A Yes.

23 Q When was the first occasion you did that?

24 A It was sometime after Steve Mayer took the seminar.

25 MR. WELSH: I would like some clarification. I  
26 think that question may be a little indefinite. When you say  
27 visited Grass Valley, do you mean the town of Grass Valley  
28 or CYAN Engineering at Grass Valley?

1 MR. GOLDENBERG: I think your comment is well  
2 taken. Did you understand, sir?

3 THE WITNESS: I assumed reference to CYAN.

4 Q BY MR. GOLDENBERG: This Intel intellect system referred  
5 to in Paragraph 7 of the exhibit, what kind of microprocess  
6 was that used with or in conjunction with?

7 A With any of Intel's microprocessors.

8 Q Was that the 8008?

9 A You could use the 8008 with that, yes, or the 8080.

10 Q And that's what Intel was offering at that time, sir?

11 A That and the four bit processor, four thousand series.

12 Q Which type was Mr. Mayer interested in, if you know?

13 A He was interested in the whole line.

14 Q Did Cramer Engineering ever sell Mr. Mayer a micro-  
15 processor to your knowledge, sir?

16 A No.

17 Q Do you know if Mr. Mayer ever had in his possession an  
18 Intel microprocessor, if you know, sir?

19 A I don't know.

20 MR. WELSH: Counsel, do you mean apart from the  
21 intellect development system?

22 Q BY MR. GOLDENBERG: Was there a microprocessor in the  
23 intellect system? A Yes.

24 Q Which one?

25 A I don't know.

26 Q What you are saying, apart from that intellect develop-  
27 ment system, you don't know whether CYAN Engineering or  
28 Steve Mayer ever bought an Intel microprocessor from Cramer?

1 A No, I don't.

2 Q They were your customer, weren't they?

3 A They were my customer.

4 Q But you don't know --

5 MR. MORLEY: That was a question.

6 Q BY MR. GOLDENBERG: They were your customer, weren't they?

7 MR. MORLEY: I believe his answer was, "They were  
8 my customer." I believe that was the question.

9 MR. GOLDENBERG: That's not an answer. You are  
10 asking were they your customer, sir.

11 MR. WELSH: I object. I would like to have the  
12 question read back. By whom do you mean "they"?

13 MR. GOLDENBERG: CYAN Engineering and/or Steve  
14 Mayer.

15 MR. MORLEY: Were they your customer?

16 Q BY MR. GOLDENBERG: Were they your customer?

17 A Yes.

18 Q But you have no recollection of ever having sold them  
19 a microprocessor? A True.

20 Q You do remember the purchase of this intellect develop-  
21 ment system, however?

22 A Yes.

23 Q Why does that stand out in your mind, sir, why you  
24 remember it?

25 A Because Cramer lent them the system that we had until  
26 Intel could deliver.

27 Q Did CYAN Engineering continue as your customer through  
28 the balance of '74, the balance -- for the balance of your

1 employment?

2 A CYAN Engineering never bought anything other than an  
3 intellect system from me, but I did have contact with them.

4 Q Do you know, sir, whether or not they ever acquired  
5 any Intel microprocessors from any source?

6 A I do not know.

7 Q If they -- they didn't get them through Cramer, where  
8 might they have gotten them?

9 A From many other distributors in the area. At that time  
10 I can't remember who Intel had as a distributor, but there  
11 were other distributors.

12 Q There were other distributors?

13 A True.

14 Q Now, going on to Paragraph 8 of the affidavit, you say,  
15 "Jesse Huffman and I personally visited Steve Mayer at CYAN  
16 Engineering in Grass Valley, California about one month  
17 prior to the date that the intellect development system  
18 referred to in Paragraph 7 above was loaned to CYAN Engineer-  
19 ing." Is that still your recollection, sir?

20 A Yes.

21 Q How did you get to Grass Valley?

22 A Drove.

23 Q Was the trip more than one day or less than a day?

24 A I continued on to Reno.

25 Q Who did you see on the occasion of that visit at Grass  
26 Valley, CYAN Engineering?

27 A Steve Mayer.

28 Q Anybody else?

1 A I think I met one other person, but I can't remember  
2 who it was.

3 Q How long did the visit last?

4 A Couple of hours.

5 Q On the occasion of that visit, did Mr. Mayer ask  
6 technical questions about Intel microprocessor chip sets?

7 A Yes.

8 Q Who answered the questions?

9 A Jesse Huffman.

10 Q Do you recall what kinds of questions they were, sir?

11 A Not directly, no.

12 Q Do you have a recollection, sir, as to whether or not  
13 Mr. Huffman was able to answer the questions?

14 A He wasn't able to answer all the questions.

15 Q Did the occasion of that visit either during it or after  
16 it, did Mr. Huffman make any comments to you about Mr.

17 Mayer's questions? A No.

18 Q About Mr. Mayer?

19 A I don't really recall.

20 Q Were there any comments about Mr. Mayer's abilities or  
21 knowledge of the matters that were being discussed?

22 A I think we both recognized that he was a very intelligent  
23 guy.

24 Q Did he seem to know what he was talking about, sir,  
25 your impression at that time?

26 MR. WELSH: Objection. There's no foundation that  
27 he even formed any impression or gave any consideration to  
28 the matter at that time.



1 MR. GOLDENBERG: Let's do it that way, then.

2 Q BY MR. GOLDENBERG: Did you form an impression at that  
3 time that Mr. Mayer knew what he was talking about?

4 MR. WELSH: Objection. You're leading the witness,  
5 and I think it's improper --

6 MR. GOLDENBERG: I thought that was the question  
7 you wanted me to ask. I misunderstood. Sometimes I mis-  
8 understand. Tell me the question you'd like me to ask, Mr.  
9 Welsh.

10 MR. WELSH: You ask the question. If I object,  
11 I will.

12 Q BY MR. GOLDENBERG: Did you form an impression at that  
13 time, sir, that Mr. Mayer knew what he was talking about  
14 insofar as microprocessors were concerned?

15 MR. MORLEY: If you could form an impression.

16 THE WITNESS: I can't form an impression (inaudible).

17 MR. GOLDENBERG: I think this is what the witness  
18 said, and you correct me if I don't put it correctly. "I  
19 tended to form an impression that he knew what he was talking  
20 about because I didn't know what he was talking about."

21 MR. MORLEY: I don't think that's what he said,  
22 and it's the exact opposite. He was not able to form an  
23 impression as to whether or not Mr. Huffman or Mr. Mayer  
24 knew what he was talking about.

25 MR. GOLDENBERG: Let's have the question read  
26 back, and you give the answer as you wish to give it.

27 MR. MORLEY: My question to you right afterwards  
28 is if you can form an impression or if you had an impression,

1 and if you had the basis to be able to form an impression.

2 THE WITNESS: I did not --

3 MR. GOLDENBERG: All is implicit in there. That's  
4 your view of the question, sir. My question is very  
5 simple. Did you form an impression?

6 MR. MORLEY: I understand that.

7 MR. WELSH: I object to the question on the ground  
8 that it lacks a foundation that he formed any impression at  
9 all as to whether or not Mr. Mayer --

10 MR. GOLDENBERG: I sometimes feel like I am in  
11 Alice in Wonderland.

12 Q BY MR. GOLDENBERG: Do you understand my question, sir?

13 A Yes, I do.

14 Q Can you answer it?

15 A I think I did.

16 MR. KATZ: The reporter didn't get it.

17 MR. GOLDENBERG: The problem came that the reporter  
18 didn't get your answer. Would you like the question read  
19 back to you?

20 THE WITNESS: Please.

21 MR. GOLDENBERG: And then state your answer.

22 (Whereupon, the record was read by the reporter.)

23 THE WITNESS: My answer is that I didn't have the  
24 ability to form an impression whether he knew what he was  
25 talking about.

26 Q BY MR. GOLDENBERG: Was it still the situation that as  
27 far as you knew, that he knew more about microprocessors  
28 than you did? A Certainly.

1 Q Did you form any impression at that time as to whether  
2 he knew more about microprocessors than Jesse Huffman did?

3 A Yes, I did.

4 Q What was that?

5 A That Jesse couldn't answer his questions.

6 Q Well, sir, would it be a fair characterization of what  
7 you just said that on that basis, you felt he knew more  
8 about microprocessors than Jesse Huffman did?

9 A Yes.

10 Q Do you know on the occasion of that visit whether Mr.  
11 Mayer had put to use this intellect development system that  
12 had been loaned to him?

13 MR. WELSH: Objection. I don't think it has been  
14 established the time --

15 MR. GOLDENBERG: I'm misreading what I have, and  
16 you're quite right, Mr. Welsh. I withdraw this question,  
17 because this first visit took place according to the state-  
18 ment here one month before the system was loaned to him.

19 MR. MORLEY: Maybe at this time we can take a little  
20 bit of a break. We seem to be a little bogged down in more  
21 objections than testimony, and maybe if I can talk to the  
22 witness.

23 (Whereupon, a recess was taken.)

24 Q BY MR. GOLDENBERG: Mr. Thomas, on the occasion of this  
25 first visit to CYAN Engineering in Grass Valley, did you know  
26 what business they were in?

27 MR. WELSH: You said -- are you referring to a  
28 particular paragraph?

1 MR. GOLDENBERG: No, I am not. I can do so.

2 Q BY MR. GOLDENBERG: The first visit to CYAN Engineering  
3 referred to in Paragraph 8 of your affidavit, at the time  
4 you made that visit, did you know what business CYAN  
5 Engineering was in?

6 A I think I answered earlier I knew that they were  
7 consultant or an engineering group.

8 Q For Atari?

9 A For Atari.

10 Q Well, did you know what kind of products they were  
11 consulting? A No.

12 Q Well --

13 A I knew they were games.

14 Q When did you find that out, sir?

15 A Well, let me rephrase that. I assumed they were games  
16 if they were dealing with Atari.

17 Q Well, on the occasion of that visit, did your knowledge  
18 of what kinds of things they were consulting with Atari about,  
19 did you find out then?

20 A Specifics, no.

21 Q The occasion of that visit, sir, did you see any kinds  
22 of things that they might have been working on as you went  
23 into their premises?

24 A I just saw older video games, and I did see a pinball  
25 machine.

26 Q That's the pinball machine referred to in Paragraph 9  
27 of your affidavit? A True.

28 Q Was there any conversation about that pinball machine?

1 A No.

2 Q Was it assembled or disassembled?

3 A Disassembled.

4 Q Can you describe as best you can the degree of disassembly  
5 as you saw it at that time?

6 A The only thing I could see there were wires hanging out  
7 of it. Seemed like the back was off of it.

8 Q You mean, by the back, what do you mean?

9 A The back of it.

10 Q The portion of the pinball machine that extends  
11 vertically above the game cabinet?

12 A True.

13 Q That wasn't on the machine?

14 A That was on, but the back of that was off.

15 Q Was the glass off of the play field?

16 A I don't remember.

17 Q Was the play field covered -- was that lifted up?

18 A It was -- yes, it was lifted up.

19 Q You're sure of that?

20 A The best of my memory. The thing was disassembled.  
21 What parts exactly were disassembled, I can't really be  
22 positive, give you a positive answer.

23 Q Well, I note in Paragraph 9 you characterize it as an  
24 electromechanical pinball machine. What did you mean when  
25 you said that, sir, in your affidavit?

26 A That there just seemed to be a lot of wires hanging out  
27 of it.

28 Q Anything else? A No.

1 Q What does electromechanical mean to you, sir, or what  
2 did it mean to you at the time you made the affidavit?

3 A At the time I made the affidavit, it means that it's  
4 run strictly electromechanically, with relays.

5 Q Does that complete your answer?

6 A Yes.

7 Q Did Mr. Schnayar use that phrase in the affidavit, or  
8 is this a phrase you gave to him in the course of your  
9 conversations?

10 A What phrase?

11 Q Electromechanical.

12 A That's the phrase I used.

13 Q You told him that?

14 A (Witness nods head up and down.)

15 Q Did you examine the interior of the pinball game cabinet  
16 at that time? A No.

17 Q So you don't really know what was inside?

18 A I walked by it.

19 Q Did you -- but you did not examine it?

20 A No, I did not.

21 Q So you really don't know what was inside the cabinet?

22 A True.

23 Q Did you see any evidence on the occasion of that first  
24 visit to CYAN at Grass Valley that Mr. Mayer or anybody else  
25 there was working with solid state electronic components?

26 A Did I see any evidence?

27 Q Yes, sir.

28 A I think Steve had a circuit board in his office.

1 Q And it had solid state electric components on it?

2 A Yes.

3 Q Was there any discussion about that circuit board?

4 A No.

5 Q Was there any discussion at all about the work that was  
6 going on at CYAN Engineering on the occasion of this first  
7 visit?

8 A Not other than just an engineering group.

9 Q By that you mean there was no talk about what kind of  
10 projects they were working on?

11 A True.

12 Q Well, did you gain an understanding in any way, sir,  
13 that they were working on solid state circuits?

14 A Yes.

15 Q How did you gain that impression?

16 A By the questions that were being asked by Steve Mayer.

17 Q Observing the circuit board, does that also help you  
18 gain that impression?

19 A I think I gained the impression from the first phone  
20 call from Steve Mayer.

21 Q The first evidence that you saw was this circuit board  
22 in Mr. Mayer's office; is that correct?

23 MR. MORLEY: The first tangible evidence.

24 MR. GOLDENBERG: Tangible evidence, yes, thank you.

25 THE WITNESS: First tangible evidence was asking  
26 for samples of other parts that I represented.

27 Q BY MR. GOLDENBERG: And these were solid state electric  
28 components? A Yes.

1 Q So the circuit board that you saw, if that did anything,  
2 that really confirmed or reinforced your understanding;  
3 would that be a fair statement?

4 A That would be a fair statement.

5 Q I direct your attention to Paragraph 10 of the affidavit.  
6 I would ask you, sir, wouldn't it be correct that there  
7 have actually been discussions with Steve Mayer about Intel  
8 microprocessor chip sets prior to this meeting in Mr. Mayer's  
9 office?

10 A Yes. He had meetings with Intel.

11 Q He had gone to the seminar among other things?

12 A Among -- yes.

13 Q And at the time of this meeting, the order for the Intel  
14 intellect development system, had that order been placed?

15 A Yes. To the best of my recollection.

16 Q What did you mean by the statement in the first sentence  
17 of Paragraph 10, then, "At this meeting Jesse Huffman and I  
18 discussed Intel microprocessor chip sets and other micro-  
19 processor related products with Steve Mayer"? What did  
20 you mean by that statement in your affidavit?

21 A That Jesse and Steve had -- were having conversations  
22 about Intel's total offering of microprocessor -- micro-  
23 processors as they stand alone and microprocessor related  
24 products, meaning the support chips that went along with the  
25 microprocessor.

26 Q Could you tell me generally what support chips are, or  
27 what they were back in this time period 1974.

28 A You can't just use a microprocessor and a circuit. You



1 have to have RAM and ROM and different interface circuits  
2 to the microprocessor so it can talk to the outside world.

3 Q RAM and ROM are memory chips?

4 A True.

5 Q Interface chips that permit the microprocessor to  
6 receive input signals or data and output?

7 A True.

8 Q Was that the first time those things had been talked  
9 about with Mr. Mayer?

10 MR. WELSH: Objection. By whom?

11 MR. GOLDENBERG: By the witness or anyone to his  
12 knowledge.

13 THE WITNESS: No.

14 Q BY MR. GOLDENBERG: They had been talked about before?

15 A True.

16 Q Going on to the second sentence in Paragraph 10 reads,  
17 "In this regard, Jesse Huffman told Steve Mayer how micro-  
18 processor chip sets could replace the large number of TTL  
19 logic chips that Atari was presently using in games." Was  
20 that the occasion of this meeting at Grass Valley? Was that  
21 the first time Mr. Huffman told Mr. Mayer that?

22 MR. MORLEY: To your knowledge.

23 MR. GOLDENBERG: To your knowledge, sir.

24 MR. MORLEY: Everything to your knowledge.

25 THE WITNESS: To my knowledge, yes.

26 Q BY MR. GOLDENBERG: Actually, sir, wasn't it a fact as  
27 far as you knew Mr. Mayer knew that months ago, didn't he,  
28 months prior to that occasion; isn't that true?

1 MR. MORLEY: If you know.

2 MR. WELSH: Objection.

3 Q BY MR. GOLDENBERG: Wouldn't he have learned that by  
4 attending -- I didn't give you a chance to answer that ques-  
5 tion. If you know, sir.

6 A I don't know, but I would assume he did.

7 Q It's something he would have learned at that seminar  
8 if he didn't know it before he went to the seminar?

9 MR. WELSH: I object to the question as calling for  
10 speculation and not within the knowledge of this witness.

11 Q BY MR. GOLDENBERG: Did you ever attend one of the Intel  
12 seminars yourself? A No.

13 Q Isn't it the fact, sir, that Intel was selling the  
14 microprocessor chip sets just based on that proposition  
15 by using them you could replace a large number of TTL logic  
16 chips?

17 A That's true.

18 Q That's the basis which they are being sold in the  
19 industry? A True.

20 Q Going on to Paragraph 11, the first sentence, "At this  
21 meeting it was my impression that Steven Mayer was being  
22 very evasive and secretive about the details of the work he  
23 had been doing or planned to do at CYAN Engineering."  
24 Do you believe that statement to be true today on the basis  
25 of your present recollection?

26 A Yes.

27 Q What caused you to have that impression, sir?

28 A Because he wasn't relating any of his questions to a

1 product.

2 Q That was it?

3 A That was it.

4 Q Who suggested the use of the words evasive and secretive  
5 in this affidavit?

6 A Those are my words.

7 Q Those are your words. When you entered the laboratory,  
8 sir, at Grass Valley on that occasion, were things covered up?

9 A No.

10 Q Did they tell you not to look at anything?

11 A No.

12 Q Ask you to keep your eyes on the floor?

13 A No.

14 Q Didn't hide the pinball machine, did they?

15 A No.

16 Q Circuit board on Mr. Mayer's desk, didn't hide that,  
17 did they? A No.

18 Q Did they tell you there were certain rooms or something  
19 you couldn't go into? A No.

20 Q Do you think that is evasive and secretive?

21 A Do I think that specifically is evasive and secretive?

22 Q That kind of conduct.

23 A No.

24 Q So what makes it evasive and secretive is he didn't  
25 tell you his projects?

26 A True.

27 Q I can understand the word secretive, but what is  
28 evasive about that? Did you ask him questions that you didn't

1 get answers to?

A Yes.

2 Q What kind of questions?

3 A "What are you going to use these microprocessors for?"

4 Q What did he say?

5 A "We have several projects."

6 Q You knew they were games, didn't you?

7 A I assumed they were games.

8 Q And you saw a pinball game there, didn't you?

9 A Yes.

10 Q The next sentence is, "My understanding of the reason  
11 for this was that he did not want information of their  
12 projects to leak to competitors." How did you come to that  
13 understanding?

14 A Through my contacts with Atari when they came out with  
15 Pong, there were fifteen or twenty other guys that built Pong.  
16 Even today they get copied, and that is a big problem for  
17 that industry.

18 Q That's the sole basis of your statement in the affidavit?

19 A Yes.

20 Q No other reason?

21 A No other reason.

22 Q Is that common or uncommon in the industry that you  
23 have served for a number of years?

24 A Uncommon.

25 Q It's uncommon? A True.

26 Q To be secretive about your development work?

27 MR. WELSH: That wasn't the question.

28 THE WITNESS: That wasn't the question.

1 Q BY MR. GOLDENBERG: Perhaps my question was misunderstood,  
2 sir, and I didn't give you the proper advocacy for that.  
3 It's common in the development industry as you have seen it,  
4 sir, over the years that you have worked with them, to be  
5 secretive about development projects, isn't it?

6 MR. WELSH: I object to the question as lacking a  
7 foundation and also calling for speculation.

8 MR. GOLDENBERG: I think the witness is -- I think  
9 had very significant and --

10 THE WITNESS: It's uncommon. Atari is the only  
11 account I've ever signed a nondisclosure agreement with  
12 in the twelve years I have been in the business.

13 MR. GOLDENBERG: I hadn't said anything about a  
14 disclosure agreement, but --

15 THE WITNESS: Well, I offered it.

16 MR. GOLDENBERG: Could you answer my question.

17 MR. WELSH: He did answer your question.

18 MR. GOLDENBERG: No, sir, he didn't.

19 MR. MORLEY: Is it common or uncommon is his  
20 question.

21 THE WITNESS: It's uncommon.

22 Q BY MR. GOLDENBERG: To keep your development work con-  
23 fidential for a period of time in your experience?

24 A In my experience.

25 Q And I gather from what you have said a moment ago you  
26 have never been asked to sign a confidential disclosure  
27 agreement by anybody other than Atari.

28 A True.

1 Q When did you sign that, sir?

2 A I don't remember.

3 Q That's before your first contact with Steve Mayer?

4 A I don't remember.

5 MR. MORLEY: His first contact was by telephone,  
6 so obviously it couldn't have been before then.

7 MR. GOLDENBERG: Pardon?

8 MR. MORLEY: His first contact was by telephone,  
9 so it couldn't be by then.

10 MR. GOLDENBERG: He had contacts with Atari before  
11 then. That's what he makes reference to.

12 Q BY MR. GOLDENBERG: Was it before this first telephone  
13 contact that you had with Mr. Mayer?

14 A I don't remember. I couldn't tell you when I signed  
15 that.

16 Q Mr. Schnayar ask you if they were secretive about their  
17 work in any of the conversations you had with him?

18 A I think he did.

19 Q Who brought up the matter of secrecy first, you or Mr.  
20 Schnayar?

21 A I did.

22 Q Why did he ask you?

23 A I don't know.

24 Q If you had already told him that they were secretive  
25 about their work, why did he ask you?

26 MR. WELSH: I object to the question. He has no  
27 knowledge of why Mr. Schnayar might have asked him something.

28 Q BY MR. GOLDENBERG: Does it seem logical to you, sir, if

1 you told him that they were secretive for Mr. Schnayar to  
2 ask you whether or not they were secretive?

3 A I didn't think about the logic. I was asked the same  
4 questions many times.

5 Q How many times?

6 MR. MORLEY: Now you are having a reference to  
7 questions, many times?

8 MR. GOLDENBERG: That's what the witness said.

9 MR. MORLEY: Then you say how many times, questions.  
10 He was making a general statement, and you are asking how  
11 many times to a general statement. If you want to get to  
12 a specific question, then you can follow up.

13 MR. GOLDENBERG: I withdraw the question.

14 Q BY MR. GOLDENBERG: Did you ever see Mr. Schnayar after  
15 this second meeting where he brought back the affidavit and  
16 you then went out and signed it?

17 A Yes.

18 Q How many times? A Once.

19 Q When was that, sir?

20 A A month ago. I don't know the exact date.

21 Q Was that in connection with this declaration which we  
22 earlier identified as Exhibit CL?

23 A Yes.

24 Q Was it on the date shown on that declaration, or was it  
25 at some --

26 A I think it was the day before, two days before, some-  
27 thing like that.

28 Q I direct your attention to Paragraph 12 of the affidavit.

1 With respect to the first two or three lines where you state  
2 Steve Mayer asked Jesse Huffman questions about how to  
3 interface a microprocessor chip set to outside components,  
4 was Mr. Huffman able to answer his questions?

5 A Not all of them.

6 Q Did you form an impression at that time as to whether  
7 or not Mr. Mayer had any knowledge whatsoever about that  
8 subject?

9 A I assumed he did by going to the seminar.

10 Q Isn't it the fact, sir, that on the occasion of that  
11 visit Mr. Mayer knew quite a bit how to interface a micro-  
12 processor chip set with outside components? To your knowledge,  
13 isn't that true?

14 MR. WELSH: I object to the question that the  
15 witness has no knowledge and did not have any knowledge at  
16 that time as to how much Mr. Mayer knew.

17 Q BY MR. GOLDENBERG: Isn't it the fact, sir, that you  
18 concluded at that time that Mr. Mayer knew quite a bit how  
19 to interface a micro chip set to outside components?

20 MR. WELSH: I object to that question as lacking  
21 a foundation that he formed any conclusion with respect to  
22 that subject matter at that time.

23 Q BY MR. GOLDENBERG: All you have to do is answer no then  
24 if that's the fact.

25 MR. MORLEY: Can you answer the question?

26 THE WITNESS: I can't answer the question.

27 MR. GOLDENBERG: That's fine. All right.

28 Q BY MR. GOLDENBERG: Now, sir, what is the fact, do you



1 in your present recollection recall them using the term  
2 strobing, matrix and matrix multiplexing on the occasion of  
3 this first visit to Grass Valley?

4 A There were terms like that used. There were a lot of  
5 terms that were used that I didn't understand.

6 Q Do you recall specifically whether those terms were used?

7 A Yes.

8 Q There's no doubt in your mind on that?

9 A To the best of my memory, there were words like that  
10 used.

11 Q So you're not completely sure, are you, sir?

12 MR. MORLEY: I believe he just said to the best  
13 of his memory.

14 Q BY MR. GOLDENBERG: No. I asked you was there any  
15 doubt in your mind on that, and you can answer that one yes  
16 or no, and if you want to provide an explanation, you are  
17 free to do so.

18 A There is doubt in my mind of the whole affidavit if  
19 you want to look at it that way. That, yes, this is the  
20 best of my memory. This was eight years ago, and I cannot  
21 say that everything is definite. We have made changes  
22 today because things have been jogged, and that's all I can  
23 say, to the best of my memory I gave you the best shot that  
24 came out from eight years ago, and that's it.

25 Q Where did those terms come from in the course of any  
26 conversation you had with Mr. Schnayar about this matter?  
27 Did they come from you, or did they come from Mr. Schnayar,  
28 those particular terms, sir?

1 A Those terms came from Mr. Schnayar.

2 Q He suggested them to you?

3 A There were a lot of terms that were thrown out, and I  
4 picked up on those.

5 Q What other terms were thrown out you didn't pick up on?

6 A I can't remember all the terms he threw out. He threw  
7 out a lot of technical terms. I really can't.

8 Q But he gave you a whole list of terms?

9 A Threw out a lot of terms.

10 Q What do you mean by a lot, ten, fifteen, twenty?

11 A Probably ten terms.

12 Q You don't remember what any of the others were?

13 A No, I don't.

14 Q Did you, yourself, ever study any of the printed material  
15 put out by Intel for their microprocessor during this period,

16 '73-'74? A No.

17 Q But you were trying to sell the Intel microprocessor,  
18 is that correct, sir?

19 A That's correct.

20 Q But you really had no great knowledge of the device?

21 A That was -- I had just gotten into electronics, and I  
22 used Jesse Huffman and people like Jesse Huffman when I had  
23 to go into customers. A distributor basically calls on  
24 buyers normally. They do very little engineering work.

25 Q Is the term "strobing" mean anything to you today?

26 A No.

27 Q Does the term matrix?

28 A No.

1 Q Matrix multiplexing?

2 A No.

3 Q I show you a document here, and I ask you if you have  
4 ever seen that document or anything like that before?

5 A Yes.

6 Q Can you tell me what it is, sir?

7 MR. WELSH: Can we identify it some way.

8 MR. GOLDENBERG: Well, let's call it Thomas  
9 Deposition Exhibit 1, and we'll have it marked.

10 THE WITNESS: It's just what it says it is. It's  
11 a user's manual for the MCS-4 microcomputer set.

12 Q What is the MCS-4 microcomputer set?

13 A It's a four bit microprocessor.

14 Q Made by what company?

15 A Intel.

16 Q And what generally is in this user's manual, if you know?

17 A I'm sure there's schematics on how --

18 MR. MORLEY: First of all, do you know?

19 Q BY MR. GOLDENBERG: Yes, do you know?

20 A I don't know what's in there.

21 Q Don't speculate. If you know, that's fine.

22 A I don't know what's in there.

23 Q What was the first occasion that you have seen that  
24 publication or publications like that?

25 A When I started at Cramer.

26 (Whereupon, a discussion was had off the record.)

27 MR. GOLDENBERG: While we were off the record, it  
28 was agreed that the cover of the user's manual that I

1 inquired about will be marked as Thomas Deposition Exhibit 1.  
2 I agreed to furnish a copy of the entire manual to Messrs.  
3 Welsh and Katz, and maybe they will let us use their copying  
4 machine out here before we leave. I'm going to put "cover  
5 only" in parenthesis.

6 Q BY MR. GOLDENBERG: How many conversations have you had  
7 with Mr. Schnayar?

8 A All conversations face-to-face?

9 Q Let's take face-to-face conversations. I think you  
10 have told me about three, sir. The first time he was in  
11 your office for an hour and a half, and then the second  
12 time where he brought the affidavit I have been asking you  
13 about, and then the third one was in connection with this  
14 declaration. Have there been others?

15 A There was one other.

16 Q When was that, sir?

17 A There was one of signing this declaration, and there  
18 was one with Mr. Schnayar and Mr. Katz and Jesse Huffman.

19 Q When you had the conversation with respect to the  
20 declaration which is Exhibit CL, was the declaration pre-  
21 pared that day?

22 A No. What do you mean?

23 Q There was a conversation in connection with the  
24 declaration, before the declaration was prepared?

25 A True.

26 Q Was there another conversation or meeting with Mr.  
27 Schnayar where the declaration was signed?

28 A Yes.

1 Q And this was a day later?

2 A I think it was a day or two. I don't remember.

3 Q Mr. Schnayar talked to you and once again went away and  
4 prepared the declaration and came back, and you signed it?

5 A Yes, that's true.

6 Q Now, there was another conversation where Mr. Schnayar  
7 was involved, but this time also Mr. Katz and Mr. Huffman.

8 A That was before this declaration.

9 Q Where did that conversation take place?

10 A In my office.

11 Q How long did it last, sir?

12 A Couple of hours.

13 Q What was the purpose of that meeting? Let me strike  
14 that. What happened at that meeting, sir?

15 A We just tried to further jog one another's memories  
16 of the events, Jesse and I talked about going up to Grass  
17 Valley and all the things that happened during this whole  
18 time period.

19 Q Did Mr. Schnayar and Mr. Katz participate in this jogging  
20 session?

A Yes.

21 Q How did they participate?

22 A Basically by listing the events down as we talked  
23 about them.

24 Q Did they make suggestions to you or to Mr. Huffman about  
25 events?

A No.

26 Q Are you sure?

A Yes.

27 Q What kinds of things was your memory jogged about on  
28 the occasion of that meeting?

1 MR. MORLEY: If you can answer that question.

2 MR. GOLDENBERG: If you can answer it.

3 THE WITNESS: What kinds of things?

4 Q BY MR. GOLDENBERG: Yes, sir. What things were you  
5 reminded of or told about that you didn't remember before  
6 the meeting?

7 MR. WELSH: Objection. That there were such  
8 things. There's no foundation.

9 MR. GOLDENBERG: Let me withdraw the question. On  
10 the occasion of that meeting was your memory jogged as a  
11 result of the meeting?

12 A Yes.

13 Q In what respect, sir, was it jogged?

14 A On things that went on when we -- how the timing of  
15 going up to Grass Valley, tried to put that in perspective  
16 of the actual time during the year that we went up there,  
17 also why -- what we took with us when we went up there. And  
18 to the point that we remember taking Steve to lunch and  
19 things like that. There was nothing dramatic or outstanding  
20 that changed.

21 Q This was after you made the affidavit?

22 A Yes.

23 Q Before you made the declaration?

24 A Yes.

25 Q Did you have more than one visit to Grass Valley to

26 CYAN Engineering?

A Yes.

27 Q How many?

28 A One other.

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1 Q When was that, sir, when was the second one?

2 A I think it was later in '74 like November time frame.

3 Q Did you see any applications or use of the microprocessor?

4 A No. I dropped off samples and left.

5 Q You did not go in?

6 A I did not go in.

7 Q Who did you give the samples to?

8 A I don't even know. One of the engineers that were  
9 working there, met him outside the lab and gave him the  
10 samples and left.

11 Q Was it outside a lab, or was it outside the building  
12 itself?

13 A It was inside the building, but outside, it was a  
14 funny building anyway. It was like there was all kinds of  
15 things going on in the building. Looked like there was  
16 five or six different types of business were in that building.

17 Q Did this engineer, do you recall who he was?

18 A No, I don't.

19 Q Did he come outside of the CYAN offices and meet  
20 you in a hall or something?

21 A Yes.

22 Q Did he know you were coming or how did that happen?

23 A I was looking for Steve, but he had to leave for some  
24 reason. I don't know what it was.

25 Q This fellow that you gave these parts to, whatever  
26 they were, was it somebody you knew --

27 A No.

28 Q -- at CYAN Engineering?

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1 MR. MORLEY: Wait until he finishes his question.

2 Q BY MR. GOLDENBERG: Was it somebody you knew at CYAN  
3 Engineering?

A No.

4 Q How did you happen to give the parts to him?

5 A I walked up, and he was standing at the doorway, and  
6 as I remember was standing at the doorway, and I said I was  
7 looking for Steve Mayer, and he said he had to leave. I  
8 said, "Well, I'm Ken Thomas from Cramer, and I have some  
9 samples he was looking for," and gave them to him.

10 Q Did you ever have any other contacts with Steve Mayer  
11 after that?

12 A I have just recently.

13 Q Tell me the occasion of what that is and just generally,  
14 because if it involves --

15 A It involves things I would rather not talk about.

16 Q Is it some project that Atari is working on at this time?

17 A Yes.

18 Q Did you have any conversations with Mr. Mayer about  
19 these events back in '73 and '74?

20 A Absolutely not.

21 Q Why not?

22 A For reasons that I think we stated at the beginning  
23 that I have an on-going business relationship with Atari,  
24 and I do not want this to jeopardize that.

25 Q How could it jeopardize that?

26 A I don't know. Because I don't know what this is all  
27 about.

28 Q Have you had any conversations about this, whatever

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1 it is, these events of '73-'74 with anyone other than Mr.  
2 Katz, Mr. Schnayar, Mr. Huffman?

3 A Yes.

4 Q Who?

5 A My business partner.

6 Q Could you explain.

7 A I just told him what had happened, what was going on,  
8 and that's -- he knows less than I do.

9 Q Was he involved in any way in these events in '73 and  
10 '74? A No.

11 Q That's a relatively recent business relationship you  
12 have with this gentleman?

13 A For the last four years.

14 Q Did you tell me what the business -- business you're in  
15 right now?

16 A I think I answered that earlier, but it's manufacturer's  
17 rep.

18 Q Of course, you did tell me that. Well, returning to  
19 Paragraph 12 of the affidavit, the third sentence, the  
20 second sentence reads, "Also during the meeting, Steven  
21 Mayer asked Jesse Huffman and I whether various things could  
22 be done with the microprocessor chip set and how to do those  
23 things." That's an event that you remember now, sir?

24 A Yes.

25 Q What various things did he ask about?

26 A My knowledge at that time of what was really going on  
27 was very minimal, and it was -- there were a lot of questions  
28 just asked what this -- what the power of this processor

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1 was, what it could do, what it could control, how it could  
2 be used in different applications, and I don't know what those  
3 applications meant at the time.

4 Q Nothing more specific than that?

5 A No.

6 Q Did he ask you whether or not you could control a  
7 game with the microprocessor chip set?

8 A I don't think he ever used that.

9 Q Any kind of game, he never asked about that?

10 A I don't think he ever asked that.

11 Q Do you have any doubt in your mind on that, sir?

12 A I'm almost positive he didn't say anything about a game.

13 Q So you really don't remember what those various things  
14 were?

15 MR. WELSH: Objection.

16 Q BY MR. GOLDENBERG: Isn't that -- that's true?

17 MR. WELSH: That's mischaracterizing his testimony.

18 MR. GOLDENBERG: I withdraw the question.

19 Q BY MR. GOLDENBERG: Now, I gather from what you said --  
20 let me -- I do gather from what you said earlier that although  
21 questions were put to Jesse Huffman and you, you were not  
22 able to answer the questions.

23 A That is true.

24 Q The questions were answered -- Mr. Huffman did that?

25 A That's true.

26 Q It is also your testimony that Mr. Huffman wasn't able  
27 to answer all of the questions that Mr. Mayer put?

28 A That's correct.

1 Q So therefore, the statement -- the last sentence in  
2 the affidavit, the procedure at the meeting was that Mr.  
3 Mayer asked the questions and Jesse Huffman provided the  
4 answers, that's not quite accurate, is it?

5 A I guess that's true.

6 MR. GOLDENBERG: I have no further questions.

7 MR. MORLEY: One moment, if I can say something  
8 to my client.

9 MR. GOLDENBERG: Would you like us to leave the  
10 room?

11 MR. MORLEY: No, I think I'll just take a second.

12  
13 EXAMINATION BY MR. WELSH:

14 Q Referring to the last sentence in Paragraph 12 of the  
15 affidavit, where it states the procedure at the meeting  
16 was that Steven Mayer asked the questions and Jesse Huffman  
17 provided the answers, did you mean that to the extent that  
18 answers were given to Steven Mayer's questions, that Huffman  
19 was the one that gave them?

20 A Yes.

21 Q Now, I would like to direct your attention to Paragraph 9  
22 of the affidavit and Paragraphs 2 and 3 of the declaration.  
23 I would like to have you reread those at this time.

24 A Okay.

25 Q Now, referring to Paragraph 3 of the declaration where  
26 it's stated that, "I saw the pinball machine in a partially  
27 disassembled position with the play field open," by that did  
28 you mean you could see inside the cabinet of the pinball

1 machine?

2 A I meant that I remember seeing the back, as I stated  
3 earlier, being open. I remember something hanging out the  
4 bottom, and I thought it was a bunch of wires, but --

5 Q Is it true you did not see any solid state components  
6 in the machine?

7 A This is true.

8 Q When you were being questioned about Paragraph 9 in  
9 answer to a question by Mr. Goldenberg, I believe you stated  
10 you did not examine the interior of the pinball machine at  
11 that time.

12 A That's true.

13 Q What did -- by examine, did you mean something more than  
14 just looking at the machine?

15 A Yes. I just passed by the machine and just saw it at  
16 a glance. It wasn't an examination.

17 Q When you said you did not examine it, you meant you  
18 didn't go up and look at it closely and pick out parts?

19 A That's true.

20 Q Now, turning your attention to Paragraph 6 of the  
21 affidavit, where you stated, "I first met Steven Mayer  
22 approximately three or four months prior to the time that he  
23 attended the Intel seminar referred to in Paragraph 5 above,"  
24 by "met" in that sentence, did you mean you first became  
25 acquainted with Mr. Mayer?

26 A Yes.

27 Q That was by telephone?

28 A Yes.

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1 MR. WELSH: That completes my cross examination.

2 MR. GOLDENBERG: I have no questions.

3 Mr. Thomas, the reporter is going to type up the  
4 transcript of this testimony, and she will mail to you or to  
5 your lawyer the copy of the transcript, and you'll have a  
6 chance to read it, and you'd be required to sign it. I think  
7 we can agree signature before any notary.

8 MR. KATZ: Yes.

9 MR. MORLEY: Yes, that's fine.

10 MR. GOLDENBERG: And there will be a place for  
11 you to sign it in front of any notary public. If you find  
12 any errors, and by that I mean typographical errors or some-  
13 thing, you can't change the substance of any answer that you  
14 gave, but if you believe that something was incorrectly  
15 transcribed, you can tell your attorney about it, and we  
16 can work it out between us as to provide the necessary  
17 correction. And then sign it and return it to the reporter.

18 THE WITNESS: Okay.

19  
20 KEN THOMAS

21 Subscribed to and sworn before me  
22 this \_\_\_\_\_ day of \_\_\_\_\_, 1981.  
23  
24

25 \_\_\_\_\_  
26 -o0o-  
27  
28

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